

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**ENRIQUE RIOS HERNANDEZ**

Claimant

VS.

**EXCEL CORPORATION**

Respondent

Self-Insured

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Docket No. 227,133

**ORDER**

Claimant appeals from the Award of Administrative Law Judge Pamela J. Fuller dated August 25, 1998.

**APPEARANCES**

Claimant appeared by his attorney, Michael Snider of Wichita, Kansas. Respondent, a qualified self-insured, appeared by its attorney, D. Shane Bangerter of Dodge City, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

The record and stipulations, as specifically set forth in the Award of the Administrative Law Judge, are adopted by the Appeals Board for purposes of this award.

**ISSUES**

What is the nature and extent of claimant's injury?

This issue is limited to a decision regarding claimant's functional impairment as the parties have acknowledged claimant has returned to work with respondent in accommodated work at a comparable wage, and work disability is not appropriate at this time.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds that the Award of the Administrative Law Judge sets out findings of fact and conclusions of law in sufficient detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are accurate and appropriate, and the Appeals Board adopts same as its own.

Claimant suffered accidental injury to his bilateral upper extremities, including his shoulders, as a result of a series of micro-traumas over several years with respondent. Claimant has been diagnosed by more than one doctor with carpal tunnel syndrome, chronic tendinitis, olecranon bursitis of the left elbow, bilateral mild cubital tunnel syndrome, and rotator cuff tendinitis of the shoulders. Claimant was examined and treated by Pedro Murati, M.D., a board-certified physical medicine and rehabilitation specialist, who later referred claimant to Guillermo Garcia, M.D., a board-certified orthopedic surgeon, for possible surgery. Claimant underwent conservative care but declined the recommended surgery, fearing the potential complications associated with surgery. Dr. Garcia found claimant to have reached maximum medical improvement and rated him at 2 percent to the body as a whole for the various injuries suffered.

Claimant was referred to Preston B. Koprivica, M.D., by his attorney for an examination in December 1997. Dr. Koprivica evaluated claimant, finding numerous problems, and assessed claimant a whole body 34 percent functional impairment resulting from the various injuries.

Due to the wide discrepancy in impairments, the Administrative Law Judge referred claimant to Michael J. Baughman, M.D., a board-certified orthopedic surgeon, for a court-ordered independent medical examination. Dr. Baughman's diagnosis was similar to both Dr. Garcia and Dr. Koprivica. He assessed claimant an 8 percent whole body functional impairment for the various injuries suffered.

In reviewing the medical evidence, the Appeals Board notes a substantial dispute among the doctors regarding claimant's range of motion and the physical findings associated with his injuries. Both Dr. Garcia, who examined claimant in October 1997, and Dr. Baughman, who examined claimant in April 1998, found claimant to have a full range of motion in his shoulders. Dr. Koprivica, who examined claimant in December 1997, found a substantially limited range of motion in claimant's shoulders and, in part, assessed his functional impairment based upon this limited range of motion. Disparities also exist regarding the doctors' findings associated with certain objective tests, such as the Tinel's, Phalen's and reverse Phalen's at the wrist.

The Appeals Board, as the trier of facts, has the function of deciding the accuracy and credibility of the various testimonies presented. Triers of fact are not bound by medical evidence presented, but have the responsibility of making their own determination. Tovar v IBP, Inc., 15 Kan. App. 2d 782, 817 P.2d 212, *rev. denied* 249 Kan. 778 (1991). Substantial dispute exists between Dr. Garcia, the treating physician, Dr. Koprivica, claimant's independent specialist, and Dr. Baughman, the court-appointed independent medical examiner. The Administrative Law Judge adopted the opinion of the court-appointed independent examiner as the most credible. The Appeals Board finds this decision by the Administrative Law Judge to be appropriate. In adopting the opinion of the court-appointed independent medical examiner, the Administrative Law Judge avoided some of the potential biases which may be present with hired experts for the opposing sides. A court-appointed independent examiner is intended to be independent and, therefore, less prone to any bias and prejudice which may occur in workers' compensation litigation. The Appeals Board, therefore, finds that the 8 percent whole body functional impairment assessed by Dr. Baughman is the most credible medical evidence in the record, and the Award of the Administrative Law Judge should be affirmed.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Pamela J. Fuller dated August 25, 1998, should be, and is hereby, affirmed, and an award of compensation is entered against the respondent, Excel Corporation, a qualified self-insured, and in favor of the claimant for an accidental injury occurring on June 18, 1997, and based upon an average weekly wage of \$442.31.

Claimant is entitled to 33.2 weeks compensation at the rate of \$294.89 per week, totaling \$9,790.35 for an 8 percent permanent partial general disability, making a total award of \$9,790.35. As of the date of this award, the entire amount is due and owing in one lump sum minus any amount previously paid.

Claimant's contract of employment with his attorney is approved subject to the provisions of the relevant version of K.S.A. 44-536.

The fees and expenses associated with the administration of the Kansas Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

Underwood & Shane

Transcript of proceedings	\$ 80.00
Deposition of Dr. Guillermo Garcia	\$102.50
Deposition of Enrique Rios Hernandez	\$127.50
Deposition of Dr. Michael Baughman	\$291.00

Hostetler & Associates, Inc.

Deposition of Dr. P. Brent Koprivica	\$273.35
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Alexander Reporting Company, Inc.  
Deposition of Dr. Pedro Murati

\$162.60

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 1999.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Michael Snider, Wichita, KS  
D. Shane Bangerter, Dodge City, KS  
Pamela J. Fuller, Administrative Law Judge  
Philip S. Harness, Director